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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2010 MAY 12 P 3:01

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 12 2010

DOCKETED BY

*MM*

IN THE MATTER OF THE APPLICATION OF  
DRAKE CEMENT, LLC TO ESTABLISH A NEW  
RAILROAD CROSSING ON YAVAPAI COUNTY  
ROAD 71 NEAR THE CITY OF DRAKE,  
YAVAPAI COUNTY, ARIZONA, AAR/DOT NO.  
933-885T.

DOCKET NO. RR-20736A-10-0140

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 9, 2010, Drake Cement, LLC ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for the establishment of a new public railroad crossing on Yavapai County Road 71 in the vicinity of Drake, Yavapai County, Arizona, AAR/DOT No. 933-885T.

Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern the preparation and conduct of this proceeding.

IT IS THEREFORE ORDERED that the hearing on the application shall be held on **July 19, 2010 at 10:00 a.m.**, or as soon thereafter as is practicable at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural Order, **DRAKE CEMENT, LLC SHALL PROVIDE ANY AFFECTED RAILROAD, AND ANY OTHER FEDERAL, STATE, COUNTY, MUNICIPALITY, INTERESTED AGENCY OR INTERESTED PARTY** that may be affected by the application with a copy of the application and this Procedural Order by certified mail.

IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of them with Docket Control on or before 4:00 p.m. on **June 23, 2010**.

IT IS FURTHER ORDERED that any **objections to the Staff Report and associated exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **July 6, 2010**.

IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **June 30, 2010**.

IT IS FURTHER ORDERED that Drake Cement, LLC shall provide public notice of the hearing in this matter, in the following form and style:

**PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE  
APPLICATION OF DRAKE CEMENT, LLC TO ESTABLISH A NEW  
PUBLIC AT-GRADE CROSSING ON YAVAPAI COUNTY ROAD 71 IN THE  
VICINITY OF DRAKE, YAVAPAI COUNTY, ARIZONA, AT AAR/DOT NO.  
993-885T. (DOCKET NO. RR-20736A-10-0140)**

On April 9, 2010, Drake Cement, LLC ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for the establishment of a new public railroad crossing on Yavapai County Road 71 in the vicinity of Drake, Yavapai County, Arizona, AAR/DOT No. 933-885T.

The application is available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and on the internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket function.

The Commission will hold a hearing on this matter commencing on **July 19, 2010 at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervener and of any party upon whom service of documents is to be made if different than the intervener.
2. A short statement of the proposed intervener's interest in the proceeding (e.g., a customer of the Company, a neighboring property owner, a crossing user, etc.).

1           3.     A statement certifying that a copy of the motion to intervene has been mailed  
2                 to the Applicant or its counsel and to all parties of record in the case.

3           The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except  
4           that all motions to intervene must be filed on or before June 30, 2010. The granting  
5           of intervention, among other things, entitles a party to present sworn evidence at  
6           hearing and to cross-examine other witnesses. However, failure to intervene will not  
7           preclude any affected individual from appearing at the hearing and making a  
8           statement on such individual's own behalf.

9           If you have any questions about this application, you may contact the applicant at  
10           [insert telephone number]. If you wish to file written comments on the application  
11           or want further information on intervention, you may write the Consumer Services  
12           Section of the Commission at 1200 West Washington Street, Phoenix, Arizona  
13           85007 or call 1-800-222-7000 or appear at the hearing and make comment.

14           The Commission does not discriminate on the basis of disability in admission to its  
15           public meetings. Persons with a disability may request a reasonable accommodation  
16           such as a sign language interpreter, as well as request this document in an alternative  
17           format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number (602)  
18           542-3931, E-mail SABernal@azcc.gov. Requests should be made as early as  
19           possible to allow time to arrange the accommodation.

20           IT IS FURTHER ORDERED that Drake Cement, LLC shall cause the above notice to be  
21           published at least once in a newspaper of general circulation in the vicinity of Drake, Yavapai  
22           County, Arizona where the crossing is located, with **publication to be completed no later than**  
23           **June 11, 2010.**

24           IT IS FURTHER ORDERED that notice shall be deemed complete upon the  
25           mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive  
26           the notice.

27           IT IS FURTHER ORDERED that **DRAKE CEMENT, LLC SHALL FILE**  
28           **CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS**  
29           **SOON AS PRACTICABLE** after the publication of notice ordered herein has been completed.

30           IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
31           of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*  
32           *hac vice*.

33           IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
34           with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the

Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) continues to apply to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 12<sup>th</sup> day of May, 2010.



MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 12<sup>th</sup> day of May, 2010 to:

Patrick J. Black  
FENNEMORE CRAIG  
3003 North Central Avenue, Suite 2600  
Phoenix, AZ 85012  
Attorney for Drake Cement, LLC

Martin Brennan  
YAVAPAI COUNTY ATTORNEY'S  
OFFICE  
2830 N. Commonwealth, Suite 160  
Camp Verde, AZ 86322

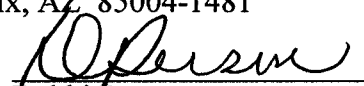
Bruce Vana, P.E., Engineer-Manager  
Utility & Railroad Engineering Section  
ARIZONA DEPARTMENT OF  
TRANSPORTATION  
205 South 17<sup>th</sup> Avenue, M/D 618E  
Phoenix, AZ 85007

Traffic Records Section  
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206 South 17<sup>th</sup> Avenue, MD-064R  
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Brian Lehman, Chief  
Railroad Safety Section  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.  
2200 North Central Avenue, Suite 502  
Phoenix, AZ 85004-1481

By:   
Debbi Person  
Assistant to Marc Stern